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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,584	10/26/2001	James R. Buechler	5489-69021	2201
7590 Richard D. Conard Barnes & Thornburg 11 S. Meridian Street Indianapolis, IN 46204	09/21/2007		EXAMINER JEAN GILLES, JUDE	
			ART UNIT 2143	PAPER NUMBER
			MAIL DATE 09/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/039,584	BUECHLER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jude J. Jean-Gilles	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 July 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-101 is/are pending in the application.  
 4a) Of the above claim(s) 1-63 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 64-75,79-81 and 91-101 is/are rejected.  
 7) Claim(s) 76-78 and 82-90 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 10/26/2001 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

This office action is responsive to the Reply filed on 07/06/2007.

### ***Response to Amendment/Arguments***

2. Claims, 1-101 are pending in the application, with claims 1-63 cancelled. Claims 1-101 represent a method and apparatus for an "METHOD OF FACILITATING MEDICAL CONSULTATIONS".

Applicant's arguments with respect to claims 1, 91, and 95 have been carefully considered, but are not deemed fully persuasive. Applicant's arguments are deemed moot in view of the existing ground of rejection as explained here below. Applicants' amendments to the independent claims are not properly made and as to perhaps place them in condition for allowance.

The dependent claims stand rejected as articulated in the First Office Action and all objections not addressed in Applicant's response are herein reiterated.

In response to Applicant's arguments, 37 CFR § 1.11(c) requires applicant to "clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. He or she must show the amendments avoid such references or objections."

Applicant's Request for Reconsideration filed on 07/06/2007 has been carefully considered but is not deemed fully persuasive.

Examiner notes that applicant has failed in presenting claims and drawings that delineate the contours of this invention as compared to the cited prior art. Applicant has failed to clearly point out patentable novelty in view of the state of the art disclosed by the references cited that would overcome the 103(a) rejections applied against the claims, the rejection is therefore sustained.

### ***Allowable Subject Matter***

3. **Claims 76-78, and 82-90** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 64-75, 79-81, and 91-101** are rejected under 35 U.S.C. 103(a) as being unpatentable over Joao U.S. Patent No. 6,283,761 in view of Evans U.S. Patent No. 6,347,329 B1.

**Regarding claim 1:** Joao discloses the invention substantially as claimed. Joao teaches a method for a first healthcare provider to consult a second

healthcare provider regarding at least one of diagnosis and treatment of a patient, the method comprising:

receiving a request for a consultation over a network submitted by the first healthcare provider via a first machine, the request including consult data (column 37, lines 10-30);

storing the consult data in a database (databases 10H, 20H, 30H, 40H, and/or 50H );

transmitting a notification over the network to the second healthcare provider in response to receiving the request for a consultation, the notification informing the second healthcare provider that a request for a consultation has been received;

receiving a request for the consult data over the network from the second healthcare provider (fig. 1, item 50 represents second healthcare);

transmitting the consult data over the network to a second machine in response to the request for the consult data (fig. 1; column 1-43); and

receiving a consultation over the network submitted by the second healthcare provider, the consultation including the second healthcare provider's assessment and/or diagnosis based on the consult data. ("The database 10H also includes data and/or information regarding all possible fields of medicine, surgery, psychiatry, psychology, dentistry, oral surgery, optometry, podiatry, physical therapy, respiratory therapy, hypnosis, osteopathy, nutrition, wellness, and/or any other possible healthcare fields and/or subject matter which can possibly be utilized in the processing and/or operation of the present invention. The database 10H contains information on illnesses,

symptoms, diseases and/or sicknesses, theories, scientific theories, research data and/or information, diagnosis information, treatment information, treatment plans, treatment processes, treatment progresses, treatment interactions, side effects, expected treatment results, treatment providers, treatment durations, treatment costs, pre-treatment information, post-treatment information, treatment monitoring information, statistical information regarding diagnoses, treatments, treatment success rates, treatment failure rates, treatment centers, therapy plans, therapy success rates, therapy failure rates, treatment procedures, medications treatments, non-medication treatments, healthcare institutions, treatment evaluating criteria, treatment mistakes and/or mishaps, indicators of mistakes and/or mishaps, corrective actions, links to providers, links to treatment centers or institutions, reimbursement rates, nutrition information, diet information, exercise information, exercise routines, treatment options, healthcare advise, wellness advice, preventive care, preventive procedure, health maintenance, drug and medication information, drug interaction information, video information, including video files or clips and other information, regarding illnesses, diseases, treatments and follow-up care, audio information, including audio files or clips and other information, regarding illnesses, diseases, treatments and follow-up care, treatment and/or procedure information and/or narratives, treatment analysis, diagnosis analysis, diagnosis monitoring, diagnosis confirmation and/or checking, and/or other information for providing the herein-described functions, services, and/or operations.")

However, Applicant has argued in the Reply dated 03/20/2007 that Joao fails to disclose or suggest the method of amended claim 1. This is because Joao is not

directed to healthcare provider-to-healthcare provider consultations. Rather, Joao is directed to a computer system wherein a database (i.e., database IOH) is used to cross-reference patient symptoms to a predetermined diagnosis and treatment. In the same field of endeavor, Evans discloses "...Healthcare providers, such as physicians, at hospitals, laboratories and clinics, generally capture and access patient data using a point of care system 100 that communicates with a patient data repository 102. Patient data, such as vital signs, x-ray images and laboratory results, resides in the patient data repository 102. The patient data repository 102 also communicates with external sources to obtain patient data, such as laboratory test results and x-ray images, and to transfer patient information, such as prescriptions for medication, from the EMR system to other healthcare providers. The point of care system 100 captures patient data in realtime at the point of care, that is, where healthcare providers interact with their patients...[see Evans, column 5, lines 2-33].

Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Evans' teachings wherein requesting a consultation includes consult data and submitting a consultation includes the second healthcare provider's assessment and/or diagnosis based on the consult data (emphasis added) with the teachings of Joao, for the purpose of improving the ability of a network "...automating, simplifying, and providing instant access to a patient's electronic medical record by authorized healthcare providers from any geographical location and allowing real time collaboration in consulting, giving diagnosis

and treatment to patients" as stated by Evans in lines 27-33, and 50-63 of column 2 .

By this rationale, **claim 64** is rejected.

**Regarding claims 64-75, 79-81, and 91-101**, the combination Joao-Evans discloses:

65. (New) The method of claim 64, wherein the consult data includes at least one of textual queries and textual statements (see Joao; 15 A-B; column 38, lines 18-34).

66. (New) The method of claim 64, wherein the consult data includes at least one of still images and moving images (see Joao; col. 17, lines 1-13).

67. (New) The method of claim 64, wherein the consult data includes sounds (see Joao; col. 17, lines 1-13).

68. (New) The method of claim 64, wherein transmitting the notification over the network to the second healthcare provider comprises generating an e-mail to the second healthcare provider, the e-mail informing the second healthcare provider that a request for a consultation has been received (see Joao; step 1104).

69. (New) The method of claim 64, further comprising:  
storing the consultation in the database; and  
transmitting a notification over the network to the first healthcare provider in response to receiving the consultation from the second healthcare provider, the notification informing the first healthcare provider that a consultation has been received (see Evans, column 5, lines 2-33).

70. (New) The method of claim 69, wherein transmitting the notification over the network to the first healthcare provider comprises generating an e-mail to the first healthcare provider, the e-mail informing the first healthcare provider that a consultation has been received (see Joao; step 1104);

71. (New) The method of claim 69, wherein storing the consultation in the database comprises storing at least one of textual queries and textual statements in the database (see Joao; 15 A-B; column 38, lines 18-34).

72. (New) The method of claim 69, wherein storing the consultation in the database comprises storing at least one of still images and moving images in the database (see Joao; col. 17, lines 1-13).

73. (New) The method of claim 69, wherein storing the consultation in the database comprises storing sounds in the database (see Joao; col. 17, lines 1-13).

74. (New) The method of claim 69, further comprising:  
receiving a request to view the consultation over the network from the first healthcare provider; and  
transmitting the consultation over the network to the first machine in response to the request to view the consultation (see Joao; fig. 1).

75. (New) The method of claim 74, further comprising transmitting a request for approval to use the consultation for medical educational purposes over the network to the first healthcare provider (see Joao; col 5, lines 45-67).

79. (New) The method of claim 64, further comprising electronically identifying the request for a consultation as pending until the second healthcare provider submits the consultation (see Joao, fig. 10).

80. (New) The method of claim 64, further comprising electronically identifying the request for a consultation as completed in response to receiving the consultation (see Joao, fig. 10).

81. (New) The method of claim 64, further comprising transmitting a notification over the network to a third healthcare provider in response to receiving the request for a consultation, the notification informing the third healthcare provider that a request for a consultation has been received (see Joao; fig. 1).

91. (New) A method for a first healthcare provider to consult a second healthcare provider regarding at least one of diagnosis and treatment of a patient, the method comprising:

receiving a request for a consultation over a network submitted by the first healthcare provider via a first machine, the request including consult data;  
storing the consult data in a database;  
generating an e-mail to the second healthcare provider in response to receiving the request for a consultation, the e-mail informing the second healthcare provider that a request for a consultation has been received;

receiving a request for the consult data over the network from the second healthcare provider; transmitting the consult data over the network to a second machine in response to the request for the consult data;

receiving a consultation over the network submitted by the second healthcare provider, the consultation including the second healthcare provider's assessment and/or diagnosis based on the consult data; generating an e-mail to the first healthcare provider in response to receiving the consultation from the second healthcare provider, the e-mail informing the first healthcare provider that a consultation has been received;

receiving a request to view the consultation over the network from the first healthcare provider; and transmitting the consultation over the network to the first machine in response to the request to view the consultation (fig. 1; column 1-43; databases 10H, 20H, 30H, 40H, and/or 50H; column 37, lines 10-30; see Evans column 5, lines 2-33);

92. (New) The method of claim 91, further comprising:

receiving an approval to use the consultation for medical educational purposes over the network from the first healthcare provider; and electronically identifying the consultation as usable for medical education purposes in response to the approval received from the first healthcare provider (see Joao; col 5, lines 45-67).

93. (New) The method of claim 91, further comprising:

receiving a request for medical education over a network submitted by a third healthcare provider via a third machine;

determining a number of consultations electronically identified as usable for medical educational purposes; and transmitting data over the network to the third machine, the data including a list of the consultations electronically identified as usable for medical educational purposes (see Joao; col 5, lines 45-67, fig. 1).

94. (New) The method of claim 91, further comprising:

determining a selected consultation from the list of consultations electronically identified as usable for medical educational purposes based on a selection made by the third healthcare provider;  
retrieving the selected consultation from the database; and transmitting the selected consultation over the network to the third machine (see Joao; col 5, lines 45-67, fig. 1).

95. (New) A method for providing medical education, the method comprising:

receiving a number of consultations submitted by a plurality of healthcare providers over a network, the consultations being based on consult data reviewed by the plurality of healthcare providers;  
storing the number of consultations in a database;  
receiving a request for medical education over the network submitted by a user via a first machine;  
generating a list of consultations that have been previously identified as usable for

medical education;  
determining a selected consultation from the list of consultations based on a selection made by the user; and  
retrieving the selected consultation from the database; and  
transmitting the selected consultation over the network to the first machine (fig. 1; column 1-43; databases 10H, 20H, 30H, 40H, and/or 50H; column 37, lines 10-30; see Evans column 5, lines 2-33);

96. (New) The method of claim 95, wherein the consultations comprise at least one of textual queries and textual statements (see Joao; 15 A-B; column 38, lines 18-34).

97. (New) The method of claim 95, wherein the consultations comprise at least one of still images and moving images (see Joao; col. 17, lines 1-13).

98. (New) The method of claim 95, wherein the consultations comprise sounds (see Joao; col. 17, lines 1-13).

99. (New) The method of claim 95, wherein storing the number of consultations comprises storing at least one of textual queries and textual statements in the database (see Joao; 15 A-B; column 38, lines 18-34).

100. (New) The method of claim 95, wherein storing the number of consultations comprises storing at least one of still images and moving images in the database (see Joao; col. 17, lines 1-13).

101. (New) The method of claim 95, wherein storing he number of consultations comprises storing sounds in the database (see Joao; col. 17, lines 1-13).

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914. The examiner can normally be reached on Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3719.

Art Unit: 2143

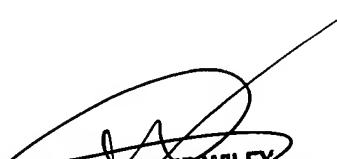
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Jude Jean-Gilles

Patent Examiner

Art Unit 2143

September 15, 2007



DAVID WILEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2700